

**INDEPENDENT MOTION PICTURE
PRODUCTION CHECKLIST
PREPARED BY PROFESSOR JON M. GARON***

The following is a general outline of the steps that will be arising with the production of a low budget original motion picture. This is a general overview only and each project has issues which may arise from time to time.¹

1. Production Company. An LLC has been formed or needs to be formed.
 - a. An Operating Agreement must be drafted and signed.
 - b. Rights currently held in various members names should be assigned to the LLC.
2. Source Material.
 - a. Identify the source of the material: Public Domain; Original Screenplay; Novel; Short Story; Comic Book; Video Game, etc. and identify the authors and current copyright holders (if separate).
 - b. Conduct a search in the copyright office to confirm no competing claims.
 - c. Chain of title requires that all rights in the source work and any future rights that may be reacquired through termination of transfers be identified.
 - d. Enter into licenses to establish chain-of-title with executed documents (in form and substance satisfactory to later Exhibitor) conveying all right, title and interest in and to all materials upon which the Picture is based.
 - e. Life Stories. Any persons depicted generally require a release or a thorough review of counsel that the production company has diligently determined that the use of the person's depiction is accurate and non-defamatory.
 - f. Coincidental Defamation. The screenplay must be reviewed for potential issues involving factual or conflicting names, places and events.
 - i. Full names of characters should not be unique, particularly in conjunction with locations.
 - ii. A character name, for example, should have at least five readily identified individuals when searched on Google.
3. Documentary Films.
 - a. Review and utilize the Best Practices guidelines regarding the use of public domain materials in making the motion picture.
 - b. Documentary filmmaking is very similar to journalism. Accuracy and integrity are essential to success. Documenting the source of all content will prove extremely useful in proving the veracity of the project.

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¹ This checklist is a summary only and cannot be relied upon as legal advice. The facts and circumstances of any particular situation require careful review and particularized analysis.

- i. Retain all original files and notes. Refer to them throughout writing, filming and editing process.
 - ii. Wherever possible, tape all interviews and retain all raw footage. (This will be important to show that the editing of filmed interviews or scenes were not edited to misrepresent the content.) Keep a careful log over every resource interview and contact.
 - c. Work to minimize incidental use of copyrighted materials and trademarked materials in background shots unless essential to subject matter. Where available, select camera angles to avoid incorporating copyrighted materials such as billboards, etc.
 - d. Do not promote or disparage specific products or brands unless these are clearly indicated as promotional endorsements or directly incorporated into the subject matter of the documentary.
4. Script.
 - a. An agreement to treat the screenplay as a work-for-hire should be executed transferring all rights to the LLC, along with short-form assignment/certificate of copyright.
 - b. The screenplay should be registered with the copyright office by the LLC as author. If it has already been registered then a transfer should be filed.
 - c. A copy of the script should also be deposited with the WGA. This provides evidentiary proof of the time at which the content was created in case of a subsequent copyright infringement claim.
5. Picture Title. You may wish to register the title with the MPAA. You may wish to order a title report from Thomson & Thomson when the final title is selected, but generally this will be done by the distributor.
6. Budget & Production Schedule. The production budget and shooting order should be set.
 - a. Dates may vary, but the general number of days should be identified.
 - b. Equipment and locations will significantly affect budget.
 - i. Determine if film to be shot on 35mm or digital.
 - ii. Determine if all locations are local, domestic but requiring relocation, or international.
 - c. The Budget also helps define the shooting schedule and location schedule.
 - d. SAG Low Budget categories (only U.S. production permitted)²:
 - i. Short Film Agreement - Total budget of less than \$50,000
 - 35 minutes or less
 - Salaries are deferred
 - ii. Ultra-Low Budget Agreement - Total budget of less than \$200,000
 - Day rate of \$100
 - iii. Modified Low Budget Agreement - Total budget of less than \$625,000
 - Day rate of \$268 or Weekly rate of \$933
 - iv. Low Budget Agreement - Total budget of less than \$2,500,000
 - Day rate of \$504 or Weekly rate of \$1752

² <http://www.sagindie.org/resources/contracts>

- e. WGA Low Budget Agreement (for purchase of spec scripts; not development)³:
 - i. Low Budget Agreement - Total budget of less than \$500,000
 - Pay rate of \$ \$42,088 – but nothing due
 - Deferred until earlier of commercial distribution or recoupment of production costs
 - ii. Low Budget Agreement - Total budget between \$500,000-\$1,200,000
 - Pay rate of \$ \$42,088
 - \$10,000 due on commencement of principal photography; \$5,000 as script publication fee once credit is determined
 - Remainder deferred until earlier of commercial distribution or recoupment of production costs
 - iii. WGA Minimum Basic Agreement - Total budget between \$1,200,000-\$5,000,000
 - Pay rate of \$ \$42,088
 - iv. Standard Budget Agreement - Total budget above \$5,000,000
 - Pay rate of \$ \$86,15

7. Talent issues.

- a. The correct pension, health and welfare costs should be included, which are determined by the applicable union agreements.
- b. Talent represented by agents will expect that the 10% agent fee will be added on top of the salary (particularly if they are receiving union minimums). If you are unwilling to pay this amount, you should negotiate to avoid the cost in advance.
- c. Payroll service often provides a substantial value and eliminates significant production and accounting costs. The payroll service may also provide the workers compensation insurance if the parties so desire.
- d. Payroll withholding and other tax issues must be addressed, either with the payroll service or directly by the production company.
- e. The budget should include the costs of music licensing. Although this expense will not be incurred until distribution, it is generally a production expense and can equal or exceed the cost of principal photography, depending on the music identified.

8. Unions.

- a. The decision to hire union employees significantly affects budgets.
- b. Determine if screenwriter is WGA.
- c. If SAG and/or WGA, use various budget categories to determine scope of other costs.
- d. The LLC should avoid hiring any person who is a member of the union unless the LLC becomes a signatory to that union agreement. Promises by the employee to ignore one's union status are not binding and will create significant problems for the production if the union later claims jurisdiction over the shoot or forces the person to quit.

³ http://www.wga.org/uploadedfiles/organize%21/LBA_Handout_10.pdf

9. Insurance.

- a. Workers Compensation insurance is required as soon as you begin hiring employees.
- b. General liability insurance to cover the rental equipment, locations, and general operations is also required before any such agreements may be entered.
- c. Errors & Omissions insurance can be purchased at any time beginning with the acquisition of the script or delayed until the distributor has been identified. This insurance has the potential for a number of exclusions and depending on the risks associated with the project, it may be helpful to purchase early in production. Many filmmakers, however, delay the purchase notwithstanding the potential for more exclusions.
- d. There are a variety of other particular policies. In this case, there may be the need for additional insurance relating to the cars used on location, etc.

10. Employment.

- a. Agreements are needed for the following:
 - i. Writer(s)
 - ii. Director
 - iii. Producer(s), Associate Producers, Line Producers, etc.
 - iv. Cast
 - v. Crew
- b. Each agreement is to be signed by a Manager of the LLC in his/her capacity. Two or more Managers should have signatory power, so they can sign each other's employment agreements.
- c. A standard agreement should be utilized for all performers. If both union and non-union performers are included, the terms will vary slightly between the two.
- d. In the case of nudity, a separate agreement should be used. This is required for SAG performers and best practice in all cases.
- e. Standard agreement terms will be used for key personnel and for all other employees working on the film.
- f. Incidental scenes with minors should include permission from their parents. More substantial use of minors should be approved by the jurisdictions rules for minor contracts (such as by superior courts in the case of California films).
- g. All credit determinations must be made part of the employment contract unless governed by union agreement. In the case of the WGA, for example, the union rules dictate the final credits and the Producer can only contract to comply with such obligations.

11. Clearances. A release or agreement is needed for every item listed, including all music, locations, background artwork, and copyrighted images.

- a. Music.
 - i. A license or release must be obtained for each piece of music used in the film.
 - ii. The costs of licensed music can range from modest to quite high and the costs will include the rights to synchronize the music with the motion

picture and re-use fees owed to the performers under various union agreements (AFofM, AFTRA).

- iii. I strongly recommend finding original music for the film rather than licensing from commercial sources. Generally, you can obtain a festival license to use licensed commercial music at film festivals, but not set the purchase price until you have distribution in place (though some licensors may be more willing to set prices than others). Without knowing the cost to acquire the music, the licensing fees can risk exceeding a film's advance sales price.
- b. Locations, background art, etc.
 - i. Each location requires a release, and typically the production company will list the location as an additional insured during the filming.
 - ii. All excerpts from film, television, photography, posters, etc. must be used only with a license or release.
 - iii. Trademarked goods and branded products generally require a license or release due to hesitation on the part of errors & omissions insurers and broadcasters.
- c. Standards & Practices. Due to variations regarding censorship restrictions in various media and territories, coverage shots should be made of all scenes involving nudity, excessive vulgarity or content otherwise considered *mature*.

12. Promotional Materials and Cross-Platform development.

- a. During the production, still photographs and making-of video footage should be collected for use in the marketing and promotion of the film.
- b. The clearance rights to use such promotional materials will be included for all cast and crew. Similar rights should be obtained for any other parties on set.
- c. A digital press kit should be provided at delivery.
- d. Social media should be used to begin to develop an audience for the project.
 - i. Facebook, MySpace, LinkedIn and other tools should be developed, as relevant to the target audience as possible.
 - ii. Relationships with community groups, nonprofit organizations and affiliated communities should be developed during pre-production. Any clearances should be obtained in advance of principal photography, if possible. Promotional considerations, use of resources or other obligations should be included in writing.
 - iii. Community press (whether through Twitter, blogs, listserves, press releases or newsletters) should be coordinated through a single source. Cast and crew should be encouraged to repost and re-tweet rather than create original content, but in any event, the strategy should be explicit with all cast and crew and guidelines provided so the correct messages are distributed, important plot information is not revealed, locations are properly managed, etc.

13. Cross-Platform Licensing.

- a. All content that you want to use in other media (soundtrack album, websites, making-of documentaries, games, merchandise, etc.) should be arranged during

pre-production and the elements necessary for that content should be created as the film is being shot.

- b. The agreements should provide broad rights to exploit this content in all media and on all merchandise or in specified media and merchandise.
- c. Be specific that such use may be made outside the scope of the project itself – for example, images on merchandise will not include the film itself.
- d. Revenues from non-filmed activities may be treated separately from film revenue. So you may pay a gross royalty for the use of someone's name/likeness on merchandise even though that person only receives salary for work in the film.
- e. Term and territory should also be broad, particularly since certain projects hit in one country instead of another.

14. Issues for Sale of Film.

- a. All delivery conditions must be able to be met (see below).
- b. Sales agents generally charge 10%.
- c. Music, underlying rights, releases must be cleared before sale or LLC risks being in breach of sales contract.
- d. Sales price is advance against royalties. Most films fail to pay beyond advance.
- e. Sales may be subdivided by both geographic region and media. Some companies exploit all markets. If a company doesn't, it will charge a high fee for sublicensing.

15. Additional Items.

- a. The final film should be submitted to the MPAA for rating.
- b. The film must be registered and deposited with the Copyright Office.
- c. Producer should review the various delivery requirements in advance of production to assure that all elements necessary for delivery are being created. This includes the documentation of each release or license; copyright chain of title; errors & omissions insurance; laboratory access letters for print and sound materials when shooting on film stock; final and approved credit information for both the opening titles, end credits, paid advertising, etc.; music cue sheets; and physical delivery requirements for film, dialog, dubbing, music, etc.

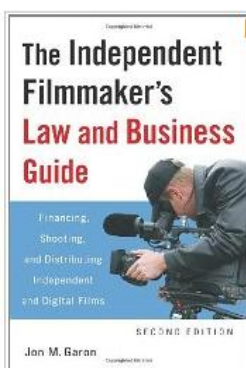
16. Delivery. (*Excerpted from theatrical distribution agreements*) The following documentation is required to be delivered, and must be complete to Distributor's counsel's satisfaction:

- a. Chain of title - including but not limited to:
 - i. Documents from writers, authors and others vesting the story and screenplay in the name of Licensor;
 - ii. Copyright Report from Thomson and Thomson or Dennis Angel. Such report may be no older than 60 days from the date of delivery of such report to Distributor.
 - iii. Title Report from Thomson and Thomson or Dennis Angel.
 - iv. Form PA Copyright Registration of the Screenplay, with filing receipt if the PA number is not stamped on the form.

- v. Form PA Copyright Registration of the Film, in the name of Licensor, with filing receipt if the PA number is not stamped on the form.
 - vi. If possible, please include a summary outline of the chain of title for the Film, in chronological order and listing the document and date thereof.
- b. Cast and Crew Agreements – for each person listed in the billing block or main titles.
- i. Agreements must contain provisions for: work for hire, assignment of rights, right to use name and likeness in publicity, and waiver of injunctive relief.
 - ii. Statement upon which distributor can reasonably rely including all paid advertising obligations undertaken, all marketing material approvals, or other rights of consultation and/or approval of marketing and promotional materials.
- c. Music – must deliver:
- i. Music cue sheet – in proper form, listing song, duration, use, publisher.
 - ii. Composer agreement, with list of which songs on cue sheet are composed.
 - iii. Synchronization and master use license for all songs (unless use license is not applicable). Licenses must contain: proper grant of rights to utilize the music in the Film as contemplated by this Agreement, must contain waiver of injunctive relief and no limitations on assignment as part of the distribution and licensing of the Film.

This outline is generally tailored to low-budget, independently produced films and does not include other eventualities such as international performers, use of animals, stunts, special effects, etc. These issues will be addressed as those issues arise. Each of these steps will incorporate a number of agreements, clearances, or production issues. It is intended as a summary of the issues only.

For additional information and sample agreements, see:



JON M. GARON, THE INDEPENDENT FILMMAKER'S LAW AND BUSINESS GUIDE: FINANCING, SHOOTING, AND DISTRIBUTING INDEPENDENT AND DIGITAL FILMS, CHICAGO REVIEW PRESS; (2D ED., 2009)
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